

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UBS INTERNATIONAL INC., et ano.,

Plaintiffs,

-against-

ITETE BRASIL INSTALACOES TELEFONICAS LTD., et al.,

Defendants.
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09 Civ. 4286 (LAK)
and consolidated case

ORDER

LEWIS A. KAPLAN, *District Judge.*


Defendant cross-claimant Instalaciones de Tendidos Telefonicos, S.A. ("Itete Spain") moves to strike the answer and cross claim of defendant cross-claimant Itete Brasil Instalacoes Telefonicas Ltd. ("Itete Brasil") on the ground that Itete Brasil has failed fully to comply with the Court's February 24, 2010 order ("Order") [DI 88]. The Order vacated an earlier order to the extent the earlier order had imposed sanctions on Itete Brasil for failing to produce discovery, but ordered that Itete Brasil, on or before March 3, 2010, produce all documents responsive to Itete Spain's First Request for Production of Documents. Itete Brasil, it should be noted, has not responded to the present motion despite the expiration of the time within which to do so.

As Itete Spain's moving papers make abundantly clear, Itete Brasil has failed to produce all of the documents required by the Order. Nor is this the first instance of breach of its discovery obligations. As the Court said in the Order, "Itete Brasil repeatedly and brazenly [had] ignored its discovery obligations" previously. [DI 88, at 4] It quite plainly has continued to refuse to produce financial statements, records concerning the disputed UBS accounts, and certain litigation in Brazil. Itete Spain, moreover, has established to the Court's satisfaction the existence of such records. In the circumstances, the inference that the breach is wilful is overwhelming, and Itete Brasil has not offered any explanation or suggested any reason why the inference should not be drawn. Moreover, given the pattern of its behavior in this action, the Court concludes that lesser sanctions, which have been attempted in the past, would not likely be effective.

Accordingly, Itete Spain's motion [DI 95] is granted. Itete Brasil's answer in No. 09-4286 (LAK) is stricken and its cross-claim is dismissed with prejudice.

SO ORDERED.

Dated: April 12, 2010



Lewis A. Kaplan
United States District Judge